

SENATE BILL 2838

By Marrero B

AN ACT to enact the "No Investment in Iran Act" and to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 24; Title 8, Chapter 34; Title 8, Chapter 35; Title 8, Chapter 36; Title 8, Chapter 37; Title 8, Chapter 5 and Title 9, relative to public investments in companies operating in Iran.

WHEREAS, on October 27, 2005, at the World Without Zionism Conference in Tehran, Iran, the President of Iran, Mahmoud Ahmadinejad, called for Israel to be "wiped off the map", described Israel as "a disgraceful blot [on] the face of the Islamic world", and declared that "[a]nybody who recognizes Israel will burn in the fire of the Islamic nations' fury"; and

WHEREAS, resolutions of the United Nations Security Council have imposed sanctions on Iran for its failure to suspend its uranium-enrichment activities, but the Iranian government has not suspended such activities as a result of those sanctions; and

WHEREAS, on March 24, 2007, the United Nations Security Council voted unanimously for an additional embargo on Iranian arms exports, banning the country's arms exports and freezing the assets and restricting the travel of additional individuals engaged in the country's proliferation-sensitive nuclear activities; and

WHEREAS, the United States renewed the Iran and Libya Sanctions Act of 1996 in 2001 and 2006; and

WHEREAS, in imposing sanctions on Iran, the United States has found that the policies and actions of the government of Iran, including continued support for international and state sponsored terrorism, ongoing efforts to destabilize neighboring governments, and the prevalence of human rights violation, including the denial of religious freedom, constitutes an extraordinary threat to national security and American foreign policy; and

WHEREAS, on July 31, 2007, the United States House of Representatives passed by a vote of four hundred eight (408) to six (6) the Iran Sanctions Enabling Act, which would allow

states to apply economic pressure on the Iranian regime by establishing a federal list of entities that invest in Iran and allowing for divestment; and

WHEREAS, on October 25, 2007, the United States announced sweeping new sanctions on Iran barring U.S. citizens and private institutions from doing business with more than twenty (20) Iranian government agencies, three (3) state-owned banks and certain Iranian individuals as the result of Iranian support of terrorism in the Middle East and its proliferation of weapons of mass destruction; and

WHEREAS, these new sanctions are the first such sanctions imposed on another country's military forces as they specifically target the Iranian Revolutionary Guard Corps, which also operates a number of businesses dominating important segments of the Iranian economy, and the Ministry of Defense; and

WHEREAS, Secretary of State Condoleezza Rice, in announcing the sanctions, labeled the Revolutionary Guards as "proliferators of mass destruction and ballistic missile technology," called the Quds Force, an undercover military wing of the Revolutionary Guards, a terrorist organization that provides "material support to the Taliban, Lebanese Hezbollah, Hamas, Palestinian Islamic Jihad and the Popular Front for the Liberation of Palestine-General Command," and declared that the sanctions are part of "a comprehensive policy to confront the threatening behavior of the Iranians"; and

WHEREAS, Secretary of the Treasury Henry Paulson said, "in dealing with Iran, it is nearly impossible to know one's customer and be assured that one is not unwittingly facilitating the regime's reckless behavior and conduct"; and

WHEREAS, foreign entities have invested in Iran's petroleum-energy sector despite United States and United Nations sanctions against Iran; and

WHEREAS, a 2006 report by United States House of Representatives states that "a company's association with sponsors of terrorism and human rights abuses, no matter how

large or small, can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment"; and

WHEREAS, according to a former chair of the United States Securities and Exchange Commission, the fact that a foreign company is doing material business with a country, government, or entity on the sanctions list of the Office of Foreign Assets Control is, in the SEC staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company; and

WHEREAS, in response to the financial risk posed by investments in companies doing business with a state that sponsors terrorists, the Securities and Exchange Commission established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies; and

WHEREAS, in direct response to the acts of the government of Iran and other governments that support terrorism or deny basic human rights, a number of state legislatures have introduced bills that seek to divest state pension funds of holdings in their portfolios of companies that engage in, or do business, with such governments; and

WHEREAS, companies facing such widespread divestment present further material risk to remaining investors; and

WHEREAS, the General Assembly is deeply concerned about investments in publicly traded companies that have business activities in and ties to Iran and Iran's petroleum-energy sector as a financial risk to the shareholders; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 37, Part 1, is amended by adding the following language as a new, appropriately designated section:

§ 8-37-1__.

(a) This section shall be known and may be cited as the "No Investment in Iran Act of 2008";

(b) The general assembly finds and declares that:

(1) There is a need for continued and increasing pressure on the Iranian government to end its nuclear program and its state sponsorship of terrorism;

(2) It is a fundamental responsibility of the state of Tennessee to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors;

(3) It is the prerogative and desire of the state of Tennessee in respect to investment resources in its control and to the extent reasonable, with due consideration for, among other things, return on investment, on behalf of itself and its investment beneficiaries, not to participate in an ownership or capital-providing capacity with entities that provide significant practical support for terrorism, including certain non-United States companies presently doing business in Iran;

(4) It is the judgment of the general assembly that this act should remain in effect only insofar as it continues to be consistent with, and does not unduly interfere with, the foreign policy of the United States as determined by the federal government; and

(5) It is the judgment of this general assembly that mandatory divestment of public funds from certain companies is a measure that should be employed sparingly and judiciously. The continuing and increasing sanctions imposed on the government of Iran by the United States and the United Nations as a result of Iran's failure to suspend its uranium-enrichment activities, its

ongoing support of international and state sponsored terrorism and its proliferation of weapons of mass destruction satisfies this high threshold.

(c) As used in this section, unless the context otherwise requires:

(1) "Active business operations" means all business operations that are not inactive business operations;

(2) "Business operations" means engaging in commerce in any form in Iran, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce;

(3) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes;

(4) "Direct holdings" in a company means all securities of that company held directly by the public fund or in an account or fund in which the public fund owns all shares or interests;

(5) "Government of Iran" means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran;

(6) "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose;

(7) "Indirect holdings" in a company means all securities of that company held in an account or fund, such as a mutual fund, managed by one (1) or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to this section;

(8) "Iran" means the Islamic Republic of Iran;

(9) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles; or supplies or services;

(10) "Mineral extraction activities" include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities;

(11) "Oil-related activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities;

(12) "Petroleum resources" means petroleum, petroleum byproducts, or natural gas;

(13) "Power production activities" means any business operation that involves a project commissioned by an entity of the government of Iran whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities;

(14) "Public fund" means any funds held by the state treasurer to the credit of the Tennessee consolidated retirement system (TCRS);

(15) "Scrutinized business operations" means business operations that have resulted in a company becoming a scrutinized company;

(16)

(A) "Scrutinized company" means any company that has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and:

(i) More than ten percent (10%) of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities; and the company has failed to take substantial action; or

(ii) The company has, with actual knowledge, on or after August 5, 1996, made an investment of twenty million dollars (\$20,000,000) or more, or any combination of investments of at

least ten million dollars (\$10,000,000) each, which in the aggregate equals or exceeds twenty million dollars (\$20,000,000) in any twelve-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran;

(B) Notwithstanding any provision of this section to the contrary, a social development company shall not be considered a scrutinized company;

(17) "Social development company" means a company whose primary purpose in Iran is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities; and

(18) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one (1) year and to refrain from any such new business operations.

(d)

(1) Within ninety (90) days of the effective date of this act, the public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future. Such efforts shall include, as appropriate:

(A) Reviewing and relying, as appropriate in the public fund's judgment, on publicly available information;

(B) Contacting other institutional investors that have divested from or engage with companies that have business operations in Iran; and

(C) Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions for companies conducting business or investing in countries that are designated state sponsors of terror.

(2) By the first meeting of the board of trustees of the public fund following the ninety-day period described in subdivision (d)(1), the public fund shall assemble all scrutinized companies identified into a "scrutinized companies list". The public fund may substitute for the "scrutinized companies list" any list published online or in the federal register by the Secretary of the Treasury, the President of the United States, or any other federal official as directed by H. R. 2347/S. 1430 of the One Hundred Tenth Congress of the United States or any substantially similar legislation, if and when such legislation becomes law.

(3) The public fund shall update the scrutinized companies list on a quarterly basis based on evolving information.

(e)

(1) The public fund shall adhere to the procedure for companies on the scrutinized companies list as provided in this subsection (e).

(2)

(A) The public fund shall immediately determine the companies on the scrutinized companies list in which the public fund owns direct or indirect holdings.

(B) For each company identified in subdivision (e)(2)(A) with only inactive business operations, the public fund shall send a written notice informing the company of the provisions of this act and encouraging it to continue to refrain from initiating active business operations in Iran until it is able to avoid scrutinized business operations. The public fund shall continue such correspondence on a semiannual basis.

(C) For each company newly identified in subdivision (e)(2)(A) with active business operations, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the public fund. The notice shall offer the company the opportunity to clarify its Iran-related activities and shall encourage the company, within ninety (90) days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the public fund.

(D) If, within ninety (90) days following the public fund's first engagement with a company pursuant to subdivision (e)(2)(C), that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and the provisions of this subsection (e) shall cease to apply to the company unless it resumes scrutinized business operations. If, within ninety (90) days following the public fund's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to all provisions relating to such operations.

(3)

(A) If, after ninety (90) days following the public fund's first engagement with a company pursuant to subdivision (e)(2)(C), the company continues to have scrutinized active business operations, and only while such company continues to have scrutinized active business operations, the public fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company within fifteen (15) months after the company's most recent appearance on the scrutinized companies list.

(B) If a company that ceased scrutinized active business operations following engagement pursuant to subdivision (e)(2)(C) resumes such operations, subdivision (e)(3)(A) shall immediately apply, and the public fund shall send a written notice to the company. The company shall also be immediately reintroduced onto the scrutinized companies list.

(4)

(A) At no time shall the public fund knowingly acquire securities of companies on the scrutinized companies list that have active business operations in Iran, except as provided in this subdivision (e)(4).

(B) No company which the United States Government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Iran shall be subject to divestment or investment prohibition pursuant to subdivisions (e)(3) and (e)(4)(A).

(f)

(1) One hundred twenty (120) days after the effective date of this act, the public fund shall file a report to the general assembly that includes the

scrutinized companies list. The report shall be made available electronically to the members of the general assembly on the state treasurer's website.

(2) Beginning one (1) year after the effective date of this act, the public fund shall file annually a report to the general assembly and send a copy of such report to the United States Presidential Special Envoy to Iran, or an appropriate designee or successor, which includes:

(A) A summary of correspondence with companies engaged by the public fund under subdivisions (e)(2)(B) and (2)(C);

(B) All investments sold, redeemed, divested, or withdrawn in compliance with subdivision (e)(3); and

(C) All prohibited investments under subdivision (e)(4)(A).

(g)

(1) The restrictions on investments by the public fund pursuant to this section shall continue until a written determination is made by the treasurer finding this section obsolete based on the occurrence of any one (1) of the following events:

(A) A declaration by Congress or the President of the United States stating that the government of Iran has ceased to acquire weapons of mass destruction and ceased to support international terrorism;

(B) Revocation by the United States of all sanctions imposed against the government of Iran; or

(C) Legislative or executive action by Congress or the President of the United States declaring that mandatory divestment of the type

provided for in this section interferes with the conduct of United States foreign policy.

(2) Any written determination pursuant to subdivision (g)(1) shall be transmitted to the public fund board of trustees, speaker of the senate, speaker of the house of representatives, governor and commissioner of finance and administration. Within thirty (30) days of any such determination, the treasurer shall notify the executive secretary of the Tennessee code commission that this section is deemed to be obsolete.

(h) With respect to actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, the public fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the public fund's securities portfolios.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.